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No. 85-817

In The

Supreme Court of the United States

OCTOBER TERM, 1985

AJAC TRANSMISSION PARTS CORP.,
FAIRBANKS RACING AUTOMATICS and
JERRY JACOBY,
Petitioners,

V.

TRANSGO, INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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INTRODUCTION

This opposition brief is filed on behalf of respondent Transgo, Inc., who emphasizes substance and brevity per Court policy.

ARGUMENT

The petition presents no issue of requiring resolution by the Supreme Court.

There is no conflict among the regional appellate courts on the issue of whether the remedy of attorney fees provided for in the Lanham Act, 15 U.S.C. 1051 et seq [especially 15 U.S.C. 1117] is available to owners of trademarks not registered with the Patent and Trademark Office who prevail on infringement claims litigated pursuant to 15 U.S.C. 1125(a). Each Court of Appeal that has ruled on this issue has ruled in the affirmative. See Metrics & Multi-Standard Components Corp. v. Met-

ric's Inc., 63 F.2d 710 (8th Cir. 1980); Rickard v. Auto Publisher Inc., 735 F.2d 450 (11th Cir. 1984); and Transgo, Inc. v. Ajac Transmission Parts Corp., 768 F.2d 1001 (9th Cir., 1985).

Over the years, all significant remedies available under 15 U.S.C. 1117, including compensatory damages and early and permanent injunctive relief, have been similarly deemed available to owners of federally unregistered trademarks who assert claims pursuant to 15 U.S.C. 1125 (a). The appellate courts have correctly determined that the remedy of attorney fees should be treated on an equal footing with these other, more primary remedies or forms of relief.

Petitioners' disappointment with the rulings of both lower courts provides no basis for consumption of the Court's valuable time.

CONCLUSION

The petition for writ of certiorari is not well taken and should be summarily dismissed.

Respectfully submitted,

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